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**IN THE SUPREME COURT
of the
STATE OF UTAH**

FILED
JUL 22 1964

Clerk, Supreme Court, Utah

PAT M. JOHNSON FRENCH,
Plaintiff and Appellant,

vs.

PHILLIP T. JOHNSON,
Defendant and Respondent.

No.
10147

APPELLANTS' BRIEF

**Appeal from the Judgment of the Third District Court
for Salt Lake County
Honorable Aldon J. Anderson, District Judge**

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UNIVERSITY OF UTAH

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**IN THE SUPREME COURT
of the
STATE OF UTAH**

PAT M. JOHNSON FRENCH,
Plaintiff and Appellant,

vs.

PHILLIP T. JOHNSON,
Defendant and Respondent.

No.
10147

APPELLANTS' BRIEF

STATEMENT OF THE KIND OF CASE

This is an action brought by the plaintiff on an order to show cause against the defendant why he should not be required to pay or why judgment should not be entered against him for the sum of \$5,300.00, the amount in default, on an order requiring the defendant to pay to the plaintiff the sum of \$50.00 a month commencing

on the 25th day of March, 1954 with costs and attorney's fees, and the defendant claiming that the plaintiff's claim is barred by the doctrine of laches and equitable estoppel.

DISPOSITION IN LOWER COURT

The case was heard on the 10th day of February, 1964, on the plaintiff's motion for an order to show cause, and again on March 9th, 1964, on the plaintiff's motion for a new trial. Both matters were resolved in favor of the defendant and the plaintiff appeals.

RELIEF SOUGHT ON APPEAL

Plaintiff seeks a reversal of the judgment and order of the lower court in favor of the defendant and for judgment against the defendant for \$5,300.00, the amount in default and for costs and attorney's fees.

STATEMENT OF FACT

On the 18th day of March, 1954, the defendant was required by order of the district court of Salt Lake County to pay to its clerk for the use and benefit and for the support of the minor child of the parties the sum of \$50.00 per month commencing on the 25th day of March, 1954.

The defendant became in default on the said payments, two months of 1954, eight months of 1955, and

twelve months for each of the years thereafter, or for 106 months, through 1963.

That though the plaintiff became married to her present husband and traveled with him on his various assignments in the armed forces of the United States, receiving allotments from the government for the benefit of the child and when she became of sufficient age, enrolling her in school under the name of French, the plaintiff's efforts to get payments from the defendant were constant and continuous (R. 26-59, T. 12-21).

No representations were ever made by the plaintiff to the defendant that payments would not be required and there was no change of the defendant's position in reliance on any representations.

ARGUMENT

POINT I.

THE EVIDENCE FAILS TO SUPPORT A FINDING OF LACHES OR EQUITABLE ESTOPPEL.

With reference to the case of *Larsen v. Larsen*, 5 U2 224, 300 P2 596, the following comment is found at page 1277 of 70 A.L.R. 2: "The court held that the evidence was such that the trial court could reasonably find facts which would support a finding that the plaintiff was barred from recovering a part of the judgment for back support on the grounds which the annotation

in 137 A.L.R. at page 886 calls laches or acquiescence, but which actually appeared to rest an equitable estoppel."

"Equitable estoppel is rooted in the maxim of jurisprudence that no man may take advantage of his own wrong; this applies both to suits at law and suits in equity. *Glus v. Brooklyn Eastern District Terminal*, 359 U.S. 231.

This rule is applied in the *Larsen* case from page 227 as follows:

"Where the father's failure to make such payments was induced by her representations or actions and where as a result of such representations or actions the father has been lulled into failing to make such payments and into changing his position which he would not have done but for such representations, and that as a result of such failure to pay and change in his conditions it will cause him great hardship and injustice if she is allowed to enforce the payment of such back installments, she may be thereby estopped from enforcing the payment of such back installments."

There is no claim in the instant case that the plaintiff made any representations or that the defendant relied on any representations or that he changed his position or that he would suffer any hardship or injustice.

The single fact that the defendant refers to is that the plaintiff failed to keep the clerk advised as to her forwarding address and that the sum of \$20.00 was

thereby returned, and which single item, which item incidentally was picked up by the defendant's wife (T. 21 and 25), the defendant in his conclusions of law signed by the court (R. 54) characterizes as "a large sum in back payments." And in this regard, when the court asked the plaintiff why she did not notify the clerk of her changes in address she said that she thought she had to employ a lawyer, which she did four different times (T. 6).

Lapse of time alone is not sufficient to invoke the doctrine of laches or equitable estoppel. *Larsen v. Larsen*, 9 U2 160; 340 P2 421. *Smith v. Bray*, 11 U2 219 357 P2 189. *Harris v. Harris*, 14 U2 96; 377 P2 1007.

CONCLUSION

The court erred in granting judgment in favor of the defendant and also in refusing to grant the plaintiff's motion for a new trial. The judgment should be for the plaintiff and against the defendant for the sum of \$5,300.00 and for costs and attorney's fees.

Respectfully submitted,

Horace J. Knowlton

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